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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 526

KENNETH B. WHEELER, *Petitioner*

v.

PAUL JONES, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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INDEX

	Page
Questions Presented	1
Statement	2
Argument	4
I. Reviewability of the State Court Decision	4
II. Existence of Federal Question	8
III. Correctness of State Court Decision	9
IV. Due Process	17
Conclusion	20

Citations

Cases

Brinkerhoff-Faris Trust & Savings Co. *v.* Hill, 281 U.S. 673, 74 L. ed. 1107	5
Cain *v.* McGregor, 182 Ark. 633, 32 S.W. 2d 319 (1930)	10
Cramp *v.* Board of Public Instruction, 368 U.S. 278	7
Crawford *v.* Harmon, 149 Ark. 343, 232 S.W. 427 (1921)	13
Deasey *v.* City of Chicago, 105 N.E. 2d 727, 412 Ill. 151	9,17
Enterprise Irrig. Dist. *v.* Farmers' Mut. Canal Co., 243 U.S. 157, 163-4	7
Fox Film Corp. *v.* Muller, 296 U.S. 207	7
Gower *v.* Johnson, 173 Ark. 120, 292 S.W. 382 (1927)	11,18
Hays *v.* Harris, 180 Ark. 354, 355, 65 S.W. 2d 526 (1934)	15
McClendon *v.* McKeown, 230 Ark. 521, 323 S.W. 2d 542 (1959)	10
Murdock *v.* Memphis, 20 Wall. 590, 636; 22 L. ed. 429	4

INDEX — (Continued)

Page

Walsh v. Mayer, 111 U.S. 31 ____ 12,18

Wilson v. Land, 166 Ark. 182, 265 S.W. 661 ____ 16

WJR, The Goodwill Station v. Fed. Com. Com. 174 F. 2nd 226, 84 U.S. App. D.C. 1 ____ 17

References

16A C.J.S., "Constitutional Law" Sec. 620 ____ 9,17

Statutes

Ark. Stat. Ann. Sec. 27-1115 ____ 4,21

Ark. Stat. Ann. Sec. 3-1204 ____ 15

United States Constitution, Amendment 14, Sec. 1 ____ 8,21

Appendix

Appendix A—Ark. Stat. Ann. Sec. 27-1115 ____ 21

Appendix B—Circuit Court's Order setting cause down for hearing upon Respondent's Demurrer to Petitioner's Complaint ____ 21

Appendix C—United States Constitution, Amendment 14, Sec. 1 ____ 21

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QUESTIONS PRESENTED

I.

Is the Decision of the State Court Based Upon an Adequate and Independent State Ground so as to Preclude Review by the United States Supreme Court?

II.

Does a Substantial Federal Question Exist in the Instant Case?

III.

Was the Judgment of the State Court, Which Was Based Upon Statutory and Case Law, Correct?

IV.

Was Due Process of Law Afforded Petitioner?

STATEMENT

Petitioner and Respondent were candidates for the Office of County Judge of Searcy County, Arkansas, in the 1964 General Election. The County Board of Election Commissioners certified the Respondent to be the winner by a vote of 1,701 to 1,691. Petitioner filed a complaint in the Circuit Court of Searcy County, alleging certain irregularities in the filing of applications for absentee ballots, as well as in the voting and conduct of the election, and attached to his complaint lists of voters alleged to have voted in the improper precinct and/or to have been ineligible voters. He did not allege that these votes were cast for the Respondent or that the results of the election would be changed if the challenged votes were set aside, nor did he allege any fraud on the part of the county officers or election officials.

A demurrer was filed by the Respondent asserting that the complaint did not state facts sufficient to constitute a cause of action, and praying that said complaint be dismissed. Upon a hearing on the matter, at which time oral arguments were presented by counsel, said demurrer was sustained by the trial court. Thereafter, Petitioner sought to amend his complaint but was not permitted to do so, the statutory period for filing a contest having expired.

An appeal was taken to the Arkansas Supreme Court wherein the Petitioner asserted that the trial court had erred in sustaining Respondent's demurrer and in not permitting him to amend his complaint, and that by such action he had been denied due process of law. In upholding the trial court's action in sustaining the demurrer, the Arkansas Supreme Court said that under a long line

of prior decisions, Petitioner's complaint failed to state a cause of action, which rendered it fatally deficient, and, therefore, not good against demurrer. The Arkansas Supreme Court also upheld the action of the trial court in refusing to allow the plaintiff to amend his complaint after the expiration of the twenty days allowed by law for contesting an election, on the ground that such an amendment would have the effect of allowing him to bring an action for the first time after the time for filing a contest had expired, which the court has consistently held is not permissible.

The Arkansas Supreme Court also held that there was no merit to Petitioner's argument that he would be denied due process of law if the court held that his complaint was subject to demurrer. In its opinion, the Court stated that, fundamentally, the appellant complained of the fact that some persons voted in precincts where they did not live and that others who were not qualified electors were allowed to vote, and that there is nothing in the due process clause to require either that a voter cast his ballot only in his home precinct or that he comply with the various Arkansas statutes defining a qualified elector. The court went on to say that, as far as the constitution is concerned, the legislature is free to dispense with both of these requirements and that it is thus readily apparent that the grievances now asserted by the plaintiff do not involve matters protected by the guaranty of due process of law.

Petitioner's motion for a rehearing was denied, and he now seeks a review of his case by filing herein a Petition for a Writ of Certiorari to the Supreme Court of Arkansas.

ARGUMENT

I.

Reviewability of the State Court Decision

The Supreme Court of the United States has consistently refused to review state court judgments based on adequate and independent non-federal state grounds, even where those judgments also decide federal questions. *Murdock* v. *Memphis,* 20 Wall. 590, 636; 22 L. ed. 429. In the instant case, the decision below is based upon adequate state grounds that serve a legitimate state interest. The requirement that an election contest be based on facts adequate to withstand a demurrer is essential to the election process of the State of Arkansas. To insist that petitioner must show that the result of the election would be changed if votes which he challenged were disregarded is to guard against frivolous and untimely election contests that are instituted as a mere harassing tactic to prolong the finality of the mandate of the election.

The statutory provisions that "The defendant may demur to the complaint where it appears on its face . . . That the complaint does not state facts sufficient to constitute a cause of action", which is contained in Ark. Stat. Ann. §27-1115,[1] was a part of the common law before it was a part of the common law before it was enacted into statute and has therefore comprised a part of Arkansas law from our earliest history. The yardstick which the Arkansas Supreme Court has applied to test the sufficiency of a complaint as against a demurrer is to be found in the many cases which the court has decided down through the years. Petitioner complains that all election cases which have been decided on this point prior to the instant case have concerned primary elections and,

[1] Full Text of Ark. Stat. Ann. Sec. 27-1115 may be found in Appendix A.

therefore, he was not aware that the same rule to test the sufficiency of the complaint would be used in cases involving general election contests. Under these circumstances, he charges that a "new, judicially-founded procedural rule (was) applied against him retroactively, without prior notice of the existence of such rule," which, as can be readily seen, is not true. In regard to Petitioner's argument on this point, the Arkansas Supreme Court said:

> "First, it is contended that those cases involved the primary election laws and are not controlling in a contest of a general election. It is true that the statute permitting a contest of a primary election, Ark. Stat. Ann. §3-245 (Repl. 1956), is not worded exactly like the statute that governs the contest of a general election §3-1204. *There is, however, nothing in the difference in wording to support the appellant's present argument.* Neither statute purports to define the allegations that a contestant must make to state a cause of action. The rule followed in our earlier opinions is not of statutory origin. It is merely an example of the basic principle that a complaint, to be good against demurrer, must state *facts* constituting a cause of action. It is the absence of such facts that makes the present complaint fatally deficient." (Emphasis added.)

In the case of *Brinkerhoff-Faris Trust & Savings Company* v. *Walter O. Hill*, 281 U.S. 673, 74 L. ed. 1107, which Petitioner has cited herein and on which he relies, it is said in footnote 9 at page 1114, 74 L. ed., that "'Had there been no previous construction of the statute by the highest court, the plaintiff would, of course, have had to assume the risk that the ultimate interpretation by the highest court might differ from its own.' Under such circumstances, the opinion indicates, he would have been considered to have been afforded a real opportunity to

protect his rights, and, consequently, would not have been denied due process, if the court's interpretation differed from his own. This Court further stated in the Brinkerhoff-Faris opinion at page 1113, 74 L. ed., (Headnotes 5, 6, and 7) the following:

> "It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court."

Numerous cases are cited in support of the above rule of law.

It is elementary, of course, that the trial court may, and, indeed, must exercise discretion in ruling on the various pleadings, as well as on other matters which call for a ruling throughout the course of a trial. It has been expressly held that much must be left to the discretion of the court, or the very object of the statute would be defeated.

The authority of the court to rule on the sufficiency of a complaint as against a demurrer is necessary to avoid a congested docket resulting from the filing of cases which have no merit. If the court were not permitted to rule on the sufficiency of a complaint, litigants who have meritorious causes of action would be unduly and unnecessarily delayed in presenting their cases for trial, and an undue burden would be placed, not only upon the court, but upon

the taxpayers as well. To deny the court to use its sound discretion in sustaining a demurrer to a complaint would strike at the very heart of our judicial system and would strip the courts of their power to discharge their duty to conduct a trial in an orderly, efficient, and just manner.

In the instant case, the Petitioner, by his own statement, admits that he did not have within his knowledge sufficient facts to make a *prima facie* case which would withstand demurrer. Therefore, it is abundantly clear that the court did not abuse its discretion in sustaining the demurrer. He complains that he should not be required to allege facts "which he cannot possibly know." The simple truth of the matter is that he must know and allege sufficient facts to make a case or else he is not entitled to maintain a cause of action. Petitioner herein is attempting to use the Court as an investigative tribunal to conduct what has been aptly termed a discovery proceeding or "fishing expedition" in the hope that the result will be in his favor.

The United States Supreme Court has held that where the state court expressly bases its decisions upon two grounds—one federal in nature and the other non-federal —the Supreme Court will then inquire whether the non-federal ground is both independent and adequate to support the judgment and, if so, review is precluded. *Fox Film Corp.* v. *Muller,* 296 U.S. 207; *Enterprise Irrig. Dist.* v. *Farmers' Mut. Canal Co.,* 243 U.S. 157, 163-4. If the non-federal ground is truly independent, the Court then lacks jurisdiction to review the federal issues decided by the state court. *Cramp* v. *Board of Public Instruction,* 368 U.S. 278.

It is readily apparent in the instant case that the decision of the state court was based upon an adequate state

ground and serves a legitimate state interest and, therefore, the petition for writ of certiorari should be denied.

II

Existence of Federal Question

The existence of a substantial federal question is a prerequisite to the exercise of jurisdiction by the United States Supreme Court. In the instant case, Petitioner makes various assertions in his jurisdictional statement regarding whether a federal question was properly raised and presented. Close examination will reveal that Petitioner mistakenly assumes the existence of a federal question. As was stated in the opinion of the Arkansas Supreme Court, Petitioner's cause simply does not include questions traditionally encompassed in the Fourteenth Amendment to the United States Constitution. Mr. Justice George Rose Smith, speaking for the court therein, said:

> "Secondly, it is insisted that this plaintiff would be denied due process of law if we should hold his complaint to be subject to demurrer. This argument has no merit. Fundamentally the appellant complains of the fact that some persons voted in precincts where they did not live and that others who were not qualified electors were allowed to vote. There is nothing in the due process clause to require either that a voter cast his ballot only in his home precinct or that he comply with the various Arkansas statutes defining a qualified elector. As far as the constitution is concerned, the legislature is free to dispense with both of these requirements. Thus it is readily apparent that the grievances now asserted by the plaintiff do not involve matters protected by the guaranty of due process of law."

Also, it should be emphasized that the statutory right which appellant now claims to be guaranteed to him under the United States Constitution was lost because of his failure to exercise it in the proper manner within the time fixed by statute. In other words, the situation in which Petitioner finds himself was brought on by his own failure to comply with the requirement that a complaint, to be good against a demurrer, must state a cause of action, and the fact that he failed to do this does not give rise to a federal question. In 16A C.J.S., "Constitutional Law," §620, it is said:

> "Due process of law is not denied by the dismissal of an insufficient or defective pleading." *Deasey* v. *City of Chicago,* 105 N.E. 2d 727, 412 Ill. 151.

Inasmuch as the Petitioner has failed to assert a recognized, substantial federal question, his petition for writ of certiorari should be dismissed for want of jurisdiction.

III

Correctness of State Court Decision

The correctness of the state court decision can best be presented by a consideration of the following questions:

A. Was the state court correct in sustaining the demurrer to the Petitioner's complaint on the ground that, under a long line of prior decisions, the complaint did not state facts sufficient to constitute a cause of action?

B. If the demurrer were properly sustained, was the state court correct in holding that it was not permissible for the Petitioner to file an amended or substituted complaint, asserting a cause of action

> for the first time, after the statutory period for filing a contest of the election had expired, contrary to the statute and the court's prior interpretation thereof?

A study of the previous decisions of the Arkansas Supreme Court will reflect that both of the above questions must be answered in the affirmative.

In the case of *McClendon* v. *McKeown*, 230 Ark. 521, 323 S.W. 2d 542 (1959), cited in the instant case, the Arkansas Supreme Court adopted a portion of the Circuit Court's opinion, which reads in part as follows:

> "Neither the allegations nor the prayer of the Petition set out a prima facie case under the procedure and allegations essential to state a cause of action for such an election contest. The Petition and prayer for relief suggest a discovery proceeding or 'fishing expedition' wherein the Court is asked to supplant or substitute the Court for the County Central Committee . . . It is not the duty, or within the power, of the Court within the scope of the allegations and prayer of the Petition herein, to impound and open the ballot box or boxes, and, in effect canvass the votes cast for Mayor in order to declare the nominee. No fraud is alleged against either the election officials or the Central Committeemen. The demurrer of L. O. McKeown is sustained and this action is dismissed at the cost of the Petitioner."

Also cited in the opinion rendered herein by the Arkansas Supreme Court is the case of *Cain* v. *McGregor*, 182 Ark. 633, 32 S.W. 2d 319 (1930). In that case, a complaint to contest a primary election for County Judge was filed within the time prescribed by statute, setting forth numerous grounds. The defendant filed an answer and later a motion to dismiss on the ground that the Collector

had failed to file with the County Clerk a list of poll taxpayers, duly authenticated as required by law. The Court held that inasmuch as the complaint was based on said list, which had never been filed, the statute had not been substantially complied with, and the complaint should be dismissed. In its opinion, the court said:

> "The whole proceeding is statutory, and the statute must be substantially followed in all proceedings, even to the trial of the contest provided by the statute. There is a presumption that the election was conducted according to law, and that the candidate legally entitled thereto received a certificate of election, and the presumption cannot be overcome by mere charges of fraud or illegalities in the conduct of the election. If the Legislature thinks that the collectors are not performing the duties required of them by statute in the premises in addition to the remedy by mandamus which now exists it might by appropriate penalties amend the statute so as to punish the offender, even to the extent of removing him from office if he failed to comply with the statute.
>
> "It follows that the judgment of the circuit court was correct, and it will be affirmed."

A fact situation similar to the one here involved was before the Arkansas Supreme Court in *Gower* v. *Johnson*, 173 Ark. 120, 292 S.W. 382, (1927). The facts therein, as stated by the court, were as follows:

> "The ground of contest is that the names of the voters who voted for Johnson do not appear upon the certified list of poll-tax payers required by the statute and because those voting for Johnson did not show a legal right to vote as required by statute. The circuit court sustained a demurer to the complaint. The complaint was filed August 23, 1926, and, on the 3rd day of September, 1926, the plaintiff asked leave to amend his complaint by stating the number of voters who voted for him

and the number who voted for the defendant, and otherwise specifying grounds of contest which were not stated in his original complaint. The defendant also filed a motion to dismiss the complaint because it did not state all of the candidates for sheriff at said primary election, and that the plaintiff received more votes than any other candidate for said office."

The trial court found the issues in favor of the defendant, and the complaint of the plaintiff was ordered dismissed. On appeal to the Arkansas Supreme Court, Mr. Chief Justice Hart said:

"The judgment of the circuit court was correct. Under our previous decisions construing our primary election statute, the right to contest a primary election is a statutory proceeding, the purpose of which is to furnish a summary remedy and to secure a speedy trial. The provision requiring the contest to be filed within ten days has been held to be mandatory and jurisdictional. If the contest is not filed within ten days after certification of the nomination complained of, the failure to institute the contest within the time is fatal to the right of the contestant. *Hill* v. *Williams,* 165 Ark. 421, 264 S.W. 964; and *Storey* v. *Looney,* 165 Ark. 455, 265 S.W. 51.

"As was said by the Supreme Court of the United States in *Walsh* v. *Mayer,* 111 U.S. 31: *'The provisions requiring it to be asserted in a particular mode and within a fixed time are conditions and qualifications attached to the right itself, and do not form part of the law of the remedy. If it is not asserted within the limited period, it ceases to exist, and cannot be claimed or enforced in any form.'*

"The allegations of the original complaint were too general. It was not stated that one of

the candidates received a plurality of votes at the election or that they were the only two candidates voted upon at said election for sheriff, or that the plaintiff received a majority of the votes cast for that office. Hence the court properly sustained a demurrer to it. The statute under consideration gives both the right to contest and the remedy of the contestant, and he must bring himself strictly within the statute by stating specifically the grounds upon which he contested the election; and his complaint, which merely stated his conclusion in the premises, was properly held to be subject to demurrer. The amendment was not filed within the time required by the statute, and, for that reason, the court properly refused to consider it. *Bland* v. *Benton*, 171 Ark. 805, 286 S.W. 976. Under the statute, the contestant is limited to the grounds of contest set out in his original complaint, and these grounds cannot be enlarged by subsequent amendments not made within the time required by the statute for contesting.

"It follows from the views we have expressed that the judgment appealed from must be affirmed." (Emphasis added.)

Thus, it is plain to see that under the Gower decision the Arkansas Supreme Court was correct in sustaining the demurrer in the instant case and in not permitting the Petitioner to amend his complaint so as to state a cause of action for the first time after the period for filing a contest had expired. As was pointed out therein, the provision requiring that the contest be filed within a specified period is mandatory and jurisdictional and the court is without jurisdiction to allow it after that period.

The court's views as to the allegations necessary to constitute a cause of action are further expressed in the case of *Crawford* v. *Harmon*, 149 Ark. 343, 347, 232 S.W. 427 (1921), wherein it is said:

"In the other paragraph of the complaint to which the court sustained the demurrer, it was alleged, in substance, that the ballots of many persons who voted in certain townships were not signed by the voter, as required by law; that appellant had no means of ascertaining and stating the names of said voters who failed to sign their ballots, and that those facts could only be ascertained by an inspection of the ballots themselves. The paragraph contained no allegations with respect to the names of any of the persons who are alleged to have cast the unsigned ballots. *Nor is there any allegation with respect to how those persons voted.* It is not alleged that the election officials failed to keep and return a register showing the names of each person who voted and the number of the ballot of each person. *Nor is it alleged that the ballots were left unsigned with any fraudulent intent on the part of the voter or any of the election judges. This being true, the allegations of the complaint were insufficient to afford grounds either for disregarding the unsigned ballots or for discarding the returns in the townships in which such ballots were alleged to have been cast. Ferguson* v. *Montgomery, supra.* It was held in that case that the statute affords two methods of identification of the ballots—one by the signatures of the voters and the other by the register kept by and returned by the election officials—and that the failure to observe one of those methods, unless done with fraudulent purposes, would not afford grounds for disregarding the vote of the precinct.

"In the present instance there is no allegation even that the unsigned votes were cast for appellee, and for this reason also the paragraph failed to state a cause of action. It is not shown that the court erred in its findings as to the majority of 84 votes received by appellee. *We find no error of the court in the proceedings."* (Emphasis added.)

Petitioner contends that he should have been permitted to amend his complaint by making it more definite and certain, which the Arkansas Supreme Court has approved in some cases. These cases are readily distinguishable, however, from the case here under consideration. In all such cases the complaint has shown that the alleged illegal votes were cast for the petitioner's opponent and, if set aside, would result in petitioner's receiving a majority of the votes, thereby stating a cause of action. Where the complaint does not state a cause of action, however, as here, such a procedure is not permissible, inasmuch as it would allow petitioner to assert, to the prejudice of the defendant,[2] a cause of action for the first time after the expiration of the time for filing a contest, or, in other words, after his right to contest the election ceases to exist.

[2] See Ark. Stat. Ann. Sec. 3-1204, Petition, Appendix A, page 21.

The action of the Arkansas Supreme Court in the instant case is further supported by the decision in *Hays* v. *Harris*, 188 Ark. 354, 355, 65 S.W. 2d 526, (1934), its *per curiam* opinion reading in part at follows:

> "It appears that, upon the rendition of the opinion per curiam, supra, the contestant, Hays, filed a second or substitute complaint to which there was attached jurisdictional affidavits complying with the requirements of §3772, Crawford & Moses' Digest. A motion was sustained in the court below to dismiss this second complaint upon the ground that it had not been filed within the time allowed by law, and, upon that motion being sustained, the circuit court made an order dismissing the suit for that reason.
>
> "The contestant has applied to us for a writ of mandamus to compel the circuit judge to proceed with the trial of the cause. Upon oral argument before us, it was agreed by the parties hereto

> that this proceeding be treated as an appeal from this order of the circuit court, and we are asked by both parties to decide the case upon its merits. We have for decision therefore the question, whether this second complaint was filed within the time allowed by law. * * *
>
> "It will be remembered that the original complaint has been dismissed, and this second or substituted complaint was filed much later than twenty days after the certification of the vote as made by the respective county committees, but within less than twenty days after the chairman and secretary of the State Central Committee had cast up such returns based on said certification and had certified the congressional nominee to the State Election Board, as required by the opinion delivered October 30, 1933."

After quoting extensively from the case of *Wilson* v. *Land*, 166 Ark. 182, 265 S.W. 661, the Court concluded with the statement that the right to contest a primary election is purely statutory and the legislature may confer it upon such terms as it sees fit; that the statute is unambiguous with respect to the time within which a contest must be filed; and that the circuit court was therefore correct in holding that this second suit was not filed within the time allowed by law, and it was properly dismissed for that reason.

Thus, from the foregoing, it is seen that the state court correctly dismissed the complaint in this case for its failure to state a cause of action and correctly held that the filing of an action after the time for filing a contest had expired, under the guise of an "amendment", was not permissible.

Therefore, the decision of the state court being in all things correct, the petition for writ of certiorari filed herein should be denied.

IV

Due Process

Petitioner herein bases his argument in support of his petition for a writ of certiorari on the due process issue. An examination of the facts surrounding this litigation, however, will reveal that Petitioner was afforded due process of law in the pursuance of his statutory right to contest the election.

The Constitution of the United States contains no provision whereby an unsuccessful candidate may contest an election. This right has been defined by statutes enacted by the Arkansas General Assembly pursuant to the authority granted to it under the Constitution of the State of Arkansas. The right must be exercised within the time fixed by statute and within the framework of the basic principles of procedure outlined by the Arkansas Supreme Court and or by statute, or such right is forfeited.

Upon the filing of Respondent's demurrer to Petitioner's complaint, an order was entered by the trial court setting the case down for a hearing on the demurrer (R. 21, Appendix B). A full hearing was had and oral arguments were presented by counsel on the issues raised by the demurrer (see Petition, page 2). Petitioner was thereby afforded due process of law, *WJR, The Goodwill Station* v. *Federal Communications Commission*, 174 F. 2d 226, 84 U.S. App. D. C. 1, reversed on other grounds, 69 S. Ct. 1097, 337 U.S. 265, 93 L. ed. 1353. As previously stated herein, due process of law is not denied by the dismissal of an insufficient or defective pleading. 16A C.J.S., "Constituitional Law" §620; *Deasey* v. *City of Chicago*, 105 N.E. 2d 727, 412 Ill. 151.

Petitioner was not entitled to file, to the prejudice of the Respondent, a cause of action for the first time after the statutory period for filing had expired, under the guise of an "amended" complaint. In the concise language of the United States Supreme Court in the case of *Walsh* v. *Mayer*, 111 U.S. 31, as cited by the Arkansas Supreme Court and quoted with approval in *Gower* v. *Johnson, supra,* and hereinbefore set out, "The provisions requiring it to be asserted in a particular mode and within a fixed time are conditions and qualifications attached to the right itself, and do not form a part of the law of the remedy"; and "If it is not asserted within the limited period, it ceases to exist, and cannot be claimed or enforced in any form."

The portion of the Arkansas Supreme Court's opinion dealing with the due process question is set out in full herein under II, "Existence of Federal Question," and the court's opinion speaks for itself. It is sufficient to point out here that the court held—and correctly so—that there is nothing in the due process clause to require either that a voter cast his ballot only in his home precinct or that he comply with the various Arkansas statutes defining a qualified elector, and that as far as the constitution is concerned, the legislature is free to dispense with both of these requirements. "Thus it is readily apparent," the court concluded therein, "that the grievances now asserted by the plaintiff do not involve matters protected by the guaranty of the due process of law."

The ruling of the state court in sustaining the demurrer was predicated upon precedent and was not a "new, judicially-founded, procedural rule, applied retroactively," as Petitioner contends. Appellant forfeited his right to maintain a cause of action by his own failure

to comply with the statutory and case law governing the exercise of such right.

There having been no substantial federal question presented under the due process clause or any other provision of the United States Constitution, and the Petitioner having been afforded due process of law in the prosecution of his statutory rights, the petition for a writ of certiorari should be denied.

CONCLUSION

Respondent submits that the decision of the state court was based upon an adequate and independent state ground; that no substantial federal question exists in the instant case; that the judgment of the state court was correct, said judgment being in accordance with the statutory and case law of long standing defining recognized, basic, and necessary principles of procedure; that said rule of law governing procedure is, and was in this instance, applied equally to all litigants; and that the Petitioner herein has been afforded due process of law.

WHEREFORE, Respondent respectfully prays that the Petitioner's Petition for a Writ of Certiorari to the Supreme Court of Arkansas be denied.

Respectfully submitted,

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APPENDIX

Appendix A

Arkansas Statutes

Section 27-1115. *Demurrer to complaint — Grounds.* — The defendant may demur to the complaint where it appears on its face, either:

First. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

Second. That the plaintiff has not legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties, plaintiff or defendant; or,

Fifth. That the complaint does not state facts sufficient to constitute a cause of action. [Civil Code, § 111; C. & M. Dig., § 1189; Pope's Dig., § 1411.]

Appendix B

Circuit Court Record
(Searcy County, Arkansas)

ORDER

This cause is set down for hearing upon Contestee's demurrer to Contestant's complaint at 1:30 o'clock P. M.

on the 10th day of December, 1964, at Harrison, Arkansas.

IT IS SO ORDERED this 4th day of December, 1964.

/s/ Woody Murray
Circuit Judge

Filed for Record
December 7, 1964.

APPENDIX C

Constitution of the United States

AMENDMENT 14

§ 1. [Citizenship—Due process of law—Equal protection.]—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.